

10/27/95

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of:

Amendment of Part 90 of the  
Commission's Rules To Provide  
for the Use of the 220-222 MHz Band  
by the Private Land Mobile  
Radio Service

PR Docket No. 89-552  
RM-8506

Implementation of Sections 3(n) and 332  
of the Communications Act

GN Docket No. 93-252

Regulatory Treatment of Mobile Services

Implementation of Section 309(j) of the  
Communications Act -- Competitive  
Bidding, 220-222 MHz

PP Docket No. 93-253

To: The Commission

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**COMMENTS OF PRONET INC.**

ProNet Inc. ("ProNet"), through its attorneys and pursuant to Section 1.415 of the Commission's Rules, 47 C.F.R. § 1.415, hereby comments on the Third Notice of Proposed Rulemaking in the above-captioned proceeding.<sup>1</sup> The Third NPRM, which recommends a major revision to licensing of the 220-222 MHz land mobile band, also proposes giving incumbent and prospective 220 MHz licensees alike the right to use their grants to provide paging service on a primary basis. If implemented, this proposal will confer an immense windfall on incumbent 220 MHz operators while inflicting substantial injury on existing paging carriers who detrimentally relied on the original 220 MHz rule relegating paging to

<sup>1</sup> Third Notice of Proposed Rulemaking, PR Docket 89-552, released August 28, 1995 (the "Third NPRM").

secondary status in the 220 MHz band. As a result, the Third NPRM's paging proposition is inherently unfair and should be rejected by the Commission.

## **I. STATEMENT OF INTEREST**

ProNet is an experienced owner and operator of paging and other wireless communications systems, providing both private and common carrier services to nearly 1,000,000 subscribers.<sup>2</sup> Pursuant to authorizations in the Special Emergency and Business Radio Services, ProNet provides wide-area simulcast systems offering advanced, one-way paging service to healthcare professionals and institutions in major metropolitan areas throughout the United States. Through various subsidiaries, ProNet also provides wide-area paging on both 931 MHz Paging and Radio Telephone Service and 929 MHz Private Carrier Paging facilities in various regions across the country. To meet growing demand and to offer its customers the highest quality service, ProNet continues to expand its holdings, and is both extending its existing networks and establishing and acquiring new systems at a rapid pace.

## **II. THE PROPOSAL TO OPEN THE 220 MHZ BAND TO PAGING CONFERS AN UNFAIR ADVANTAGE ON INCUMBENT LICENSEES**

Under the Third NPRM, existing and prospective 220 MHz licensees will be able to provide paging on a primary basis,<sup>3</sup> thus reversing the existing ban on 220 MHz paging (except as an ancillary service). That ban, which was initially suggested in the first Notice

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<sup>2</sup> This figure includes pending acquisitions.

<sup>3</sup> Third NPRM at 44.

of Proposed Rule Making in this docket because other frequency bands were available for paging operations,<sup>4</sup> was adopted in the Report and Order promulgating final rules for 220 MHz land mobile service.<sup>5</sup> The Third NPRM, by contrast, gives incumbent (i.e., Phase I) and prospective (Phase II) licensees a right to provide unrestricted paging service in the 220 MHz band.<sup>6</sup>

If adopted, the instant proposal will confer an enormous and unfair advantage on Phase I licensees, while inflicting substantial competitive harm on operators licensed to provide paging in the 150, 450 and 900 MHz bands. Moreover, while the Commission may change its mind, it must provide a reasoned explanation when it does so.<sup>7</sup> No such explanation can be found in the Third NPRM. For these reasons, the 220 MHz paging proposal should either be substantially revised along the lines suggested below, or deleted.

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<sup>4</sup> Notice of Proposed Rule Making, PR Docket No. 89-552, 4 FCC Rcd 8593, 8600 (1989).

<sup>5</sup> Report and Order, PR Docket No. 89-552, 6 FCC Rcd 2356 (1991). The Commission "declined to set aside spectrum in this band for paging operations" and barred all paging transmissions from the band, except on an ancillary basis to a licensee's primary land mobile operations. Id. at 2368.

<sup>6</sup> Third NPRM at 44. Admittedly, the proposal's scope is ambiguously stated in the Third NPRM's text, which first states that only "Phase II 220 MHz licensees [will be allowed] to perform paging operations on a primary basis" but concludes by declaring that the current paging ban will be removed "for all Phase I and Phase II licensees." Id. Considered in context, however, the latter declaration appears to reflect the Commission's intent.

<sup>7</sup> State Farm Mutual Auto Ins. Co., 463 U.S. 29, 57 (1983) ("[A]n agency's view of what is in the public interest may change. . . . But an agency must supply a reasoned analysis.") (quoting Greater Boston Television Corp. v. F.C.C., 444 F.2d 841, 852 (D.C. Cir. 1970)).

Phase I licensees in the 220 MHz land mobile service received their grants by lottery; their spectrum costs were, as a result, minimal. Although paging carriers were eligible to file lottery applications, ProNet refrained-- detrimentally relying on the then-existing prohibition against primary paging. If the subject proposal is adopted, Phase I licensees will reap an enormous windfall because their spectrum was awarded by a lottery that they had the good fortune of winning and because the Commission subsequently decided to expand 220 MHz land mobile service to include paging.

To pull even with Phase I licensees, paging carriers like ProNet will need their own 220 MHz spectrum, which, under the Third NPRM, can be acquired only by prevailing at the upcoming auctions. Thus, the Third NPRM compels longstanding paging carriers to expend substantial dollars for the same spectrum resource that Phase I licensees received essentially for free. This is an enormous and unjust windfall for Phase I licensees; as explained below, the Third NPRM is devoid of any rationale supporting its adoption.

That paging carriers have had longstanding access to frequency bands devoted exclusively to paging is no justification for the subject proposal. Existing VHF and UHF frequency bands are exhausted. Unused capacity if it exists at all, is limited to the 929 and 931 MHz bands. Many of these 929/931 MHz frequencies are already licensed and, during the past six months, there has been a torrent of applications for what remains.

Assuming arguendo that 929/931 MHz frequencies are available, Phase I licensees will still realize a substantial competitive advantage due to the 220 MHz band's superior technical characteristics for paging. Specifically, 220 MHz paging systems will have better signal propagation, in-building penetration and frequency stability than their 929/931 MHz

counterparts. As a result, a 220 MHz licensee will be able to provide paging to the same geographic footprint with fewer transmitters and lower capital cost than a 929 or 931 MHz operator. Contrary to the proposal in the Third NPRM, the 220 MHz band's advantageous features should be made available to all potential paging operators on an equal basis.

Finally, the Third NPRM (at 44) provides only two grounds for expanding 220 MHz to include unrestricted paging: (1) to enable 220 MHz licensees to compete more effectively in the mobile communications marketplace; and (2) to provide additional spectrum for paging. Neither rationale supports bestowing a windfall on a select group that has already received licenses for valuable spectrum at essentially no cost. Indeed, as shown above, if the Commission were truly intent on establishing effective competition among paging carriers, it would reject a rule that imparts an immense preference to a group (Phase I licensees) whose composition is entirely arbitrary.

### **III. THE COMMISSION SHOULD REVISE ITS PROPOSAL TO ALLOW ONLY PHASE II 220 MHZ LICENSEES TO PROVIDE PAGING ON A PRIMARY BASIS**

To avoid conferring a windfall on Phase I licensees, ProNet urges the Commission to modify its proposal. Rather than allowing future as well as existing licensees to offer primary paging, the Commission should open the 220 MHz band to unrestricted paging only to Phase II licensees.<sup>8</sup> This would serve to ensure that those entities which relied on the Commission's historical policy that the 220 MHz band is not available for primary paging are not penalized. At the same time, allowing Phase II licensees to offer primary paging

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<sup>8</sup> Incumbent 220 MHz licensee that wished to offer paging services would be free to apply for a Phase II license.

would further the Commission's goals of regulatory flexibility and the allocation of adequate spectrum to meet the ever-growing demand for paging<sup>9</sup>

#### IV. CONCLUSION

For the reasons set forth above, the Commission should modify its proposal regarding 220 MHz paging and prohibit Phase I licensees from offering paging on a primary basis.

Respectfully submitted,

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September 27, 1995

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<sup>9</sup> Third NPRM at 44.

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